IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.428 OF 2006
IN
NOTICE OF MOTION NO.3814 OF 2002
IN
L.C.SUIT NO.5306 OF 2002

Sunanda Kashiram Rajput ...Appellant

Vs.

B.M.C. & Anr. ...Respondents

Shri P.V. Dhopatkar with Shri Q.M. Ashfaq for the Appellant.

Shri J.J Xavier i/by Sajjan Oamman for the Respondent.

CORAM : A.M. KHANWILKAR, J.

DATE : JUNE 20, 2006.

P.C.:

1. Heard counsel appearing for the parties. I see no infirmity in the view taken by the court below as recorded in paragraph 4 of impugned judgment. The court below has rightly observed that except one receipt no other document has been produced by the Appellant-Plaintiff to show that she was occupying the premises from 1987 to 2002. According to the corporation, the structure has been demolished on 24th March, 2002. In the affidavit filed in the court below it has ben stated that taking advantage of the ad-interim order the Plaintiff constructed structure

consisting of two rooms. The court below has rightly adverted to the circumstance that the presence of the Appellant-Plaintiff in Room No.12 in respect of which receipt has been issued and as produced by the Plaintiff, answers the issue against the Plaintiff. The court has noted that there was injunction operating against the builder restraining him to deal with the property since 19th April, 2002. Whereas, Receipt is issued on 27th August, 2002. Besides, in the suit filed by the builder against the society names of occupants of room have been mentioned which does not disclose the name of the Appellant-Plaintiff. Instead Room No.12 is shown to be occupied by one Haricharan. Taking overall view of the matter, the court below was justified in rejecting the Notice of Motion in fact situation of the present case. No interference is warranted in this Appeal. Hence, dismissed.

JUDGE